

# SENATE RECORD VOTE ANALYSIS

104th Congress  
1st Session

**Vote No. 75**

February 22, 1995, 5:28 p.m.  
Page S-2938 Temp. Record

## BALANCED BUDGET AMENDMENT/Waiver for National Security

**SUBJECT:** A Resolution Proposing a Balanced Budget Amendment to the Constitution of the United States . . . H.J. Res. 1. Kyl motion to table the Byrd amendment No. 256.

### ACTION: MOTION TO TABLE AGREED TO, 55-41

**SYNOPSIS:** Pertinent votes on this legislation include Nos. 62-63, 65-74, and 76-98.

As passed by the House, H. J. Res. 1, a resolution proposing a Balanced Budget Amendment to the Constitution, is virtually identical to the balanced budget constitutional amendment that was considered last year by the Senate (see 103d Congress, second session, vote Nos. 47-48). The resolution: will require a three-fifths majority vote of both Houses of Congress to deficit spend or to increase the public debt limit; will require the President's annual proposed budget submission to be in balance; and will require a majority of the whole number of each House to approve any bill to increase revenue. Congress will be allowed to waive these requirements for any fiscal year in which a declaration of war is in effect. Congress will enforce and implement this amendment by appropriate legislation. The amendment will take effect in fiscal year 2002 or with the second fiscal year beginning after its ratification, whichever is later. The States will have 7 years to ratify the amendment.

**The Byrd amendment** would amend section 5 to permit waiver of the balanced budget amendment "for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution, which becomes law" (as drafted, the resolution will require a majority vote by a whole number of each House to grant such a waiver).

Debate was limited by unanimous consent. Following debate, Senator Kyl moved to table the Byrd amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

**Those favoring** the motion to table contended:

Section 5 of this constitutional amendment will allow its requirements to be waived during any fiscal year in which a declaration

(See other side)

YEAS (55)			NAYS (41)		NOT VOTING (4)	
Republicans (50 or 100%)	Democrats (5 or 11%)		Republicans (0 or 0%)	Democrats (41 or 89%)	Republicans (3)	Democrats (1)
Abraham	Hutchison	Campbell		Akaka	Inouye	
Ashcroft	Jeffords	Feinstein		Baucus	Johnston	
Bennett	Kassebaum	Hollings		Biden	Kennedy	
Bond	Kempthorne	Reid		Bingaman	Kerrey	
Brown	Kyl	Simon		Boxer	Kerry	
Burns	Lott			Bradley	Kohl	
Chafee	Lugar			Breaux	Lautenberg	
Coats	Mack			Bryan	Leahy	
Cochran	McConnell			Bumpers	Levin	
Cohen	Murkowski			Byrd	Lieberman	
Coverdell	Nickles			Conrad	Mikulski	
Craig	Packwood			Daschle	Moseley-Braun	
D'Amato	Pressler			Dodd	Moynihan	
DeWine	Roth			Dorgan	Murray	
Dole	Santorum			Exon	Nunn	
Domenici	Shelby			Feingold	Pell	
Faircloth	Simpson			Ford	Pryor	
Frist	Smith			Glenn	Robb	
Gorton	Snowe			Graham	Rockefeller	
Gramm	Specter			Harkin	Sarbanes	
Grams	Stevens				Wellstone	
Grassley	Thomas					
Gregg	Thompson					
Hatch	Thurmond					
Helms	Warner					

#### EXPLANATION OF ABSENCE:

1—Official Business  
2—Necessarily Absent  
3—Illness  
4—Other

#### SYMBOLS:

AY—Announced Yea  
AN—Announced Nay  
PY—Paired Yea  
PN—Paired Nay

of war is in effect. It will also allow a waiver by majority votes of the whole number of each House on a resolution which becomes law for any fiscal year in which the United States is engaged in military conflict, if that conflict poses an imminent and serious threat to national security. This second provision is necessary because the United States does not always declare war when it is involved in large-scale military conflicts. If such a conflict arises that is so great that it imposes a serious and imminent threat to national security, then it may well be appropriate to waive the balanced budget amendment. For instance, at the extreme, if the United States is in danger of being conquered, it will certainly be better to go into debt than it will be to no longer exist as a Nation.

At the same time, though, it is important to make certain that future Congresses do not abuse the definition of "imminent and serious military threat to national security." The United States has always been, and probably always will be, involved in many small-scale military conflicts around the world that fall well short of the definition of a war. Though we think it is impossible that a future Congress will ever declare war on another Nation simply so it can get away with deficit spending, we do not think that it is at all impossible that a future Congress may declare that an ongoing, small-scale military conflict threatens national security simply as an excuse to deficit spend.

As evidence, we point to the games that Members have played with the definition of "emergency" in previous Congresses. For instance, the so-called "Stimulus" bill of last Congress contained numerous "emergency" deficit spending items such as funding for a new jobs program. However, that program was not needed to respond to any "emergency" need; the Federal Government already has 150 jobs programs. The only reason an emergency designation was sought was to evade the strictures of the Budget Act so that the spending on this new program could all be deficit spending.

To discourage such shenanigans from being attempted with this military conflict provision a supermajority vote requirement will be established. A majority of the whole number of each House will be required to vote in favor of this waiver before it may be exercised. In the Senate, at least 51 Senators will have to go on record in favor. We are all aware that on tough votes in past years Members have either passed controversial measures by voice vote, or have passed them by simple majority votes on which a large number of Members have avoided accountability simply by not showing up and voting. No Member should be able to dodge blame for unbalancing the budget--if they believe an emergency exists that threatens the Nation, then they should cast their votes accordingly.

Some Senators have made the claim that when the United States faces a serious threat it may be difficult to find a constitutional majority of Senators who will be unwilling to deficit spend to save the Nation. We find their reasoning to be inconceivable, and totally at odds with past experience. Congress has been always quick to provide for an adequate military defense once a conflict has begun, even if it at the same time it has just as diligently tried to end the conflict. For example, the vote on whether to fight in the Persian Gulf was close, but only one Senator voted against the resolution to fund it. Under the proposal of the Byrd amendment, a majority of anywhere from 26 Senators (with a quorum of 51 Senators) on up would be all that would be necessary in the Senate to unbalance the budget for national security purposes. Apparently, some Senators think that when the country faces an imminent and serious military threat, it may be possible to get less than 51 votes, perhaps even as few as 26, to protect the country. If Senators are truly so reckless, than why even have a requirement of 26? Taking their argument to its logical conclusion, if a constitutional majority of Senators cannot be counted on to defend America, how can a simple majority or even a single Member be trusted? Why not just leave it up to the President?

Some Senators have mentioned the congressional votes on extending the draft immediately prior to World War II as examples of votes that would have failed under this balanced budget amendment. However, while it is true that those votes passed by less than constitutional majorities, it is also true that they were not budget votes and would have thus still passed under the terms of this amendment. It is also true that they were politically difficult votes on which many Members deliberately did not cast ballots in order to avoid accountability. This supermajority vote requirement which our colleagues oppose will not allow such political cowardice when voting to deficit spend.

In most cases, votes on which the security of our nation truly rests are not going to have many Members missing. Thus, as a practical matter, we are really arguing between having a 51-vote requirement in the Senate under H.J. Res. 1 and a 50-vote requirement with the Vice President voting "aye" under the Byrd amendment. Some Senators have argued that this provision violates the Vice President's right to vote to break tie votes on simple majority votes by not allowing him to vote if there is a 50-50 "tie" vote. We disagree. A constitutional majority is not the same as a simple majority. The requirement in H.J. Res. 1 is a supermajority vote requirement which, like the other supermajority vote requirements already in the Constitution, cannot result in a tie. A 50-50 vote when a whole number of each House is required to vote in favor is no more a tie vote than a 50-50 vote on a treaty on which there is a two-thirds vote requirement.

In summary, proponents of the Byrd amendment are wrong to assume that the constitutional majority vote requirement in H.J. Res. 1 will in any way threaten national security. Further, their proposal to rectify this nonexistent error would allow Members to avoid accountability on votes to unbalance the budget, and would thus make it more likely that such votes would carry. Therefore, we urge our colleagues to join us in voting to table the Byrd amendment.

**Those opposing** the motion to table contended:

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The Byrd amendment has been offered to correct a constitutional infirmity in the balanced budget amendment that has enormous policy implications. The constitutional infirmity is that section 5 of the amendment will deny the Vice President of his right to break a 50-50 tie vote in the Senate. Article I section 3 provides that in the Senate the Vice President will "have no vote, unless they be equally divided." The purpose of adding this provision to the Constitution, according to Hamilton in Federalist No. 68, was "to secure at all times the possibility of a resolution of the body." Article I section 3 of the Constitution is thus in direct conflict with section 5 of this balanced budget amendment. Courts will undoubtedly be called upon to decide this obvious conflict. Some Senators have suggested that there is no conflict because the Constitution already contains 9 supermajority vote requirements on which the Vice President has no vote in the Senate. However, in those cases, there is never a conflict, because there is never a tie vote. Further, those supermajorities all go either to the structure of our form of government or to the protection of individual rights. None of those supermajority requirements involve any of the great substantive powers enumerated in section 8 of article I or in section 9 of article I of the Constitution. In contrast, section 5 of this balanced budget amendment concerns votes on fiscal policy.

As a practical matter as well it would be foolhardy to include this constitutional majority requirement in the Constitution. Some Senators have said they do not see how we would ever arrive at a 50-50 vote tie on an issue of a national security threat to our country, but we see it as a very plausible event. If our troops are committed to a conflict, and a tie vote ensues, how will we explain it to the parents of our servicemen and women? Will any Senator want to have to admit that they voted to amend the Constitution to prevent the Vice President from voting in such a situation so that full military support could be provided to our troops in the field? The answer, of course, is that no Senator would ever want to be in that situation.

If the Byrd amendment is adopted, no Senator will ever have to be. The Byrd amendment would make our country safer by making it easier to respond in times of national emergencies, and it would correct a constitutional infirmity in H.J. Res. 1. Therefore, we oppose this motion to table.